RESPONSE of Plaintiff in Error to the Third Point in the ~~foregoing~~ Brief of Defendant.

The act of 1895 does not purport to validate such proceedings as those under which the organization of 1883 was formed, but only purports to validate those acts whereby cities attempted to accept the provisions of the Revised Statutes in lieu of any other charter they might have. The object was to cure any irregularities in the proceedings required by article 340 to be had by the city council where it sought to adopt the provisions of the general laws relating to cities. There is nothing in the acts indicating an intention to validate the acts of the inhabitants of a territory in forming an original incorporation including the territory of an existing corporation. If the construction of the act was doubtful it should not be held to validate such proceedings as those which resulted in the organization of 1883.

In Hayes vs. Mayor, etc., of Holly Springs, 114 U. S., 120, in construing a validating act, this court said: "The intention of the legislature to confirm and ratify the subscription in question can not be ascertained, with certainty, from the language of the act, which is too vague to form the basis of so important an authority as that sought to be deduced from it. As is said in State vs. Stoll, 17 Wall., 424, if the legislature intended to do what is claimed 'it was bound to do it openly, intelligibly and in language not to be misunderstood.'"

The act of 1891 expressly provides that it shall not validate the act of any town or city in unlawfully adding additional territory to such town or city without the consent of such inhabitants so added to said town or city. This proviso would prevent the act applying to said organization of 1883, for by the proceedings resulting in said organization, to defendant's area of 553 acres was added territory of an area of 942 acres to constitute the territory of the attempted corporation of 1883 without the vote of the inhabitants of such territory. Some of the inhabitants doubtless voted on the question of incorporation as did some of the inhabitants of defendant's territory, but this did not amount to a vote

of the inhabitants of the added territory on the question of annexation. (Lum vs. Bowie, 18 S. W., 144.)

Said validating acts apply only to those cities which from the time of their attempted incorporation and efforts to accept the provisions of the Revised Statutes up to the time of the passage of the acts continued to exercise the functions of cities and were up to that time recognized as such cities by the State of Texas. By the first section of each of the acts the terms thereof, which are substantially the same in each act, are made to apply only to those cities or towns as have from and after the time of their efforts to accept the Revised Statutes and become incorporated, exercised the functions of cities and been by the state recognized as such. This language could only apply to such organizations as were exercising the functions of cities and were recognized as such by the state at the time of the passage of the validating acts. If there were any doubt as to this being the proper construction of the first section of the acts, that doubt is removed by the second section of each act, wherein it is recited as a reason for having the acts to take effect at once that "the corporate existence of many of these cities is threatened by legal proceedings by which the creditors of said city would be without remedy," etc.

At the time of the passage of the first validating act the corporation attempted to be formed in 1883 had not exercised any of the functions of a city for more than a year and had not been recognized by the state as a city since November the 4th, 1889, when the quo warranto proceedings were instituted by the state. Whether it had ever been recognized by the state does not clearly appear. About a year prior to the passage of the first of said validating acts the defendant adopted the provisions of the Revised Statutes in lieu of its charter, and at the time of the passage of said act the defendant was the only City of Lampasas that was exercising the functions of a city; if there were any irregularities in the proceedings by which it adopted the provisions of the Revised Statutes they would be cured by the validating act, which could not apply both to defendant and the organization of 1883.

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